SUZANNE WALSH

IBLA 90-88 Decided January 15, 1991

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, cancelling oil and gas lease NM 58068 (OK).

Affirmed.

1. Oil and Gas Leases: Cancellation

> An oil and gas lease which was improperly issued because title to the land embraced by the lease was vested in the State of Oklahoma is properly cancelled by the Bureau of Land Management pursuant to 43 CFR 3108.3(d) (1988), when the leasehold does not contain a well capable of production of oil or gas in paying quantities, and is not committed to an approved cooperative or unit plan or communitization agreement.

APPEARANCES: Suzanne Walsh, pro se.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Suzanne Walsh has appealed a September 27, 1989, decision by the New Mexico State Office, Bureau of Land Management (BLM), cancelling competitive oil and gas lease NM 58068 (OK). The lease, issued to appellant effective February 1, 1984, embraces lots 1 through 5, sec. 36, T. 1 N., R. 28 E., Cimarron Meridian, Beaver County, Oklahoma, and contains 132.08 acres.

Lease NM 58068 (OK) was previously before the Board in Suzanne Walsh, 98 IBLA 363 (1987). In that case, Walsh appealed a decision by BLM's New Mexico State Office cancelling the lease because it had been determined that the mineral estate in the leased lands was not owned by the United States, but was vested in the State of Oklahoma. We held that the estate in question was owned by the State of Oklahoma, but determined that the Department was without administrative authority to cancel the lease. This determination was based on our finding that appellant's lease was known to contain valuable deposits of oil or gas, and that 43 CFR 3108.3(c) (1983), provided: "Leases for lands known to contain valuable deposits of oil and gas may be cancelled only by judicial proceedings in the manner provided in sections 27 and 31 of the [Mineral Leasing] Act." Id. at 371. Accordingly,

we set aside and remanded BLM's decision with instructions to refer the matter to the Department of Justice for initiation of judicial proceedings to cancel the lease.

In her statement of reasons for appeal, appellant urges that BLM be instructed to follow the Board's decision in Suzanne Walsh, supra, and refer the matter for judicial proceedings to cancel the lease. In the alternative, appellant requests a personal appearance before this Board.

BLM's September 27, 1989, decision recites the following rationale for cancelling the lease:

> Since the time of the IBLA's decision [98 IBLA 363], the Oil and Gas Reform Act and its regulations were issued, the Act no longer requires judicial cancellation of such a lease. Based on this office's interpretation of Section 5104 of the Reform Act (amended 30 U.S.C. Sec. 188(b)), and our understanding that the Walsh lease does not contain a [well] capable of production of oil and gas in paying quantities, and is not committed to an approved cooperative or unit plan or communitization agreement under Section 17(m) of the Mineral Leasing Act, it appears that administrative cancellation of the lease pursuant to 43 CFR 3108.3(d) is appropriate. The memorandum of March 31, 1989, from our Tulsa District Office, under item No. 12, states that * * * "A gas well in Sec. 35 was allocated on a pro rata basis to Sec. 36 * * *." However, no Federal Communitization Agreement was ever filed for approval covering Sec. 35 and 36. In conclusion, the matter of mineral ownership on the subject property was settled to our satisfaction by IBLA decision 85-489, dated July 31, 1987. This decision, which is fully supported by the records in this office, confirms the ownership of the mineral estate of Section 36, T. 1 N., R. 28 E., Cimarron Meridian, Oklahoma, as being with the State of Oklahoma. In view thereof, oil and gas lease OK NM 58068 is hereby administratively cancelled.

Section 5104 of the Federal Onshore Oil and Gas Leasing Reform Act of 1987, P.L. 100-203, 101 Stat. 1330-259 (1987), amended section 31(b) of the Mineral Leasing Act, 30 U.S.C. § 188(b) (1988), which had provided that the Secretary's authority to cancel a lease for post-lease violations existed "unless or until the land covered by any such lease is known to contain valuable deposits of oil or gas." As amended, this section now provides that such authority exists "unless or until the leasehold contains a well capable of production of oil or gas in paying quantities, or the lease is committed to an approved cooperative or unit plan or communitization agreement under section 226(m) of this title which contains a well capable of production of unitized substances in paying quantities."

As a result of this amendment, the regulations regarding lease cancellation have been changed since Suzanne Walsh, supra, was issued, and

no longer contain the proviso requiring judicial proceedings for cancellation of leases "known to contain valuable deposits of oil or gas." Instead, 43 CFR 3108.3(b) (1988) narrows the circumstances under which cancellation must be sought through judicial proceedings:

> Whenever the lessee fails to comply with any of the provisions of the law, the regulations issued thereunder, or the lease, and if the leasehold contains a well capable of production of oil or gas in paying quantities, or if the lease is committed to an approved cooperative or unit plan or communitization agreement that contains a well capable of production of unitized substances in paying quantities, the lease may be canceled only by judicial proceedings in the manner provided by section 27(h)(1) of the Act.

As to the Secretary's authority to cancel leases based on pre-lease factors, 43 CFR 3108.3(d) (1988) provides that "[l]eases shall be subject to cancellation if improperly issued."

The record in this case supports BLM's findings that none of the circumstances set forth in 43 CFR 3108.3(b) (1988) requiring judicial cancellation for post-lease events obtains. In the absence of such circumstances, it is not necessary to determine whether the existence of post-lease events set forth in 43 CFR 3108.3(b) (1988) requiring judicial cancellation would prohibit administrative cancellation under 43 CFR 3108.3(d) (1988) for a pre-lease event. See James W. Smith, 6 IBLA 318, 79 I.D. 439 (1972). Therefore, we find that 43 CFR 3108.3(d) (1988) authorizes BLM to cancel the lease in question administratively.

Appellant's sole argument on appeal is that BLM should be bound by our decision in Suzanne Walsh, supra, directing BLM to refer the matter for judicial proceedings to cancel the lease. We disagree. The lease signed by appellant states that the lease is subject "to all reasonable regulations of the Secretary of the Interior now or hereafter in force when not inconsistent with any express and specific provisions herein." The lease is silent as to cancellations based on pre-lease events. Accordingly, the new regulations at 43 CFR 3108.3, as they apply to such cancellations, are not inconsistent with any provision of the lease and may be applied here. Appellant has submitted no meritorious reason why current authority should not be applied to this case, nor has appellant made any showing that BLM's method of application of such authority to this case was in error.

As to appellant's request for a personal appearance before the Board, we find that no useful purpose would be served by granting oral argument in this case. Accordingly, appellant's request is denied.

Therefore, we conclude BLM's decision cancelling appellant's lease under authority of 43 CFR 3108.3(d) (1988) was proper and should be affirmed.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

John H. Kelly
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge